

EXHIBIT A

CITY OF SAN ANTONIO
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
FEDERAL COMPLIANCE MANUAL

Revised July 2004

Introduction

As Sub-grantees you are an indispensable part of the City's federal grant program. You provide the City of San Antonio and the U.S. Department of Housing and Urban Development (MUD) with assurance that the diverse communities, groups and individuals whom the federal program is intended to serve are in fact reached by the program.

Procedures established for administration of the City of San Antonio U.S. Department of Housing and Urban Development supported grant programs require adherence to several applicable Federal Regulations. To aid in the identification of those regulations and to establish uniformity in policies and procedures utilized for compliance with them, the Department of Housing and Community Development has compiled the Federal Compliance Manual". The manual is in not meant to constitute a complete compilation of all duties imposed upon Sub-grantees by law or administrative ruling or to narrow the standards to which Sub-grantees must adhere.

Certain requirements defined in this manual may not be the direct duty of the Sub-grantee. Nevertheless the Sub-grantee has ultimate responsibility for seeing that the requirement is met. All City departments, agencies and other contractors receiving federal funds for the operation of a project are required to adhere to all applicable regulations included in this manual.

DISCLAIMER

The views and materials presented herein are those of the City of San Antonio's Department of Housing and Community Development and not those of HUD. The recommendations and interpretations offered in this manual are meant to supplement not replace, the formal regulations and policies of the Community Development Block Grant and HOME Entitlement Program. In areas of doubt, readers are advised to consult the specific program regulations.

FEDERAL COMPLIANCE MANUAL

I. Record Keeping

Accurate record keeping is crucial to the successful management of City funded activities. Insufficient documentation is likely to lead to monitoring findings, and these Findings will be more difficult to resolve if records are *missing*, inadequate or inaccurate.

- A. The requirements for financial management systems and reporting are found in 24 CFR Part 85.20 for governmental and public agency sub-grantees, and in OMB Circular A-122 Attachment F, for non-profit sub-grantees. The purpose of these requirements are to ensure that a sub-grantee receiving Federal funds have financial management system sufficient to:
 - 1. provide effective control over and accountability for all funds, property, and other assets;
 - 2. identify the source and application of funds for Federally sponsored activities, including verification of the reasonableness allowability and allocability of costs and verification that funds have not been used in Violation of any of the restrictions or prohibitions that apply to this Federal assistance and
 - 3. permit the accurate complete and timely disclosure of financial results, in accordance with the reporting requirements of the City or HUD.
- B. The soundness of any organization's financial management structure is determined by its system of internal controls. Internal controls consist of a combination of procedures, specified job responsibilities, qualified personnel, and records which together create accountability in an organization's financial system and safeguard its cash, property, and other assets, Through its system of internal controls, an agency's management can ensure that:
 - 1. resources are used for authorized purposes and in a manner consistent with applicable laws regulations, and policies;
 - 2. these resources are protected against waste, mismanagement or loss; and,
 - 3. reliable information on the source, amount and use of resources are secured, maintained up-to-date, and disclosed in appropriate records and reports.
- C. Some of the basic elements that a sub-grantee should consider in developing its system of internal controls include:

1. An organizational chart setting forth the actual lines of responsibility of individuals involved in approving or recording financial transactions.
 2. Written definition of the duties of key employees.
 3. A formal system of authorization and supervision sufficient to provide accounting control over assets, liabilities, receipts, and expenditures. This should include:
 - a. maintenance of a policy manual specifying approval authority for financial transactions and guidelines for controlling expenditures; and,
 - b. written procedures for the recording of transactions as well as an accounting manual and a chart of accounts.
 4. Adequate separation of duties so no one individual has authority over an entire financial transaction. 6 organizations with very limited staff it may be difficult to achieve optimal separation of duties. In such instances, the most critical functional areas are separation between custody for cash, record keeping for cash, and control of assets easily converted to cash. Separation of duties specifically involves the separation of three types of functional responsibilities.
 - a. authorization to execute a transaction,
 - b. recording of the transaction, and custody of the assets involved in the transaction.
 5. Hiring policies to ensure that staff qualifications are commensurate with job responsibilities.
 6. Physical access to records, blank forms, cash and other assets should be limited to authorized personnel only. For example, access to accounting records should be limited to only those individuals having record-keeping or supervisory responsibility for them.
 7. Periodic comparisons of financial records to actual assets and liabilities, with corrective action taken in response to any discrepancies. As with separation of duties, this is a crucial exercise to uncover, and correct inadvertent record-keeping errors in a timely manner. It is also essential for identifying potential weaknesses in an organization's system for safeguarding resources, as well as possible instances of fraud or misuses of assets.
- D. The system of authorizations should provide a way for management to ensure supervisory approval of transactions, and documentation of these transactions for accounting purposes. A system of authorizations can be general - as in a procedure manual which explains how

accounting functions are to be performed — or very specific, as in identifying who has the authority to sign a contract on behalf of the organization or to sell a piece of equipment.

E. Sub-grantees are required to have accounting records that adequately identify the source and application of City funds provided to them. To meet this requirement, a sub grantee's accounting system should include at least the following elements:

1. A chart of accounts. This is a list of names and the numbering system for the individual accounts that contain the basic information about particular classifications of financial transactions for the organization.
2. A cash receipts journal. This journal documents (in chronological order) when funds were received, in what amounts, and from what sources.
3. A cash disbursements journal. This journal documents the expenditures of the organization in chronological order (e.g., when the expense was incurred, how much was spent, to whom it was paid, and for what purpose).
4. A payroll journal. This journal documents the organization's expenses for salaries and benefits, and distinguishes different categories for regulatory purposes.
4. A general ledger. After a transaction is entered in a journal, that information also should be transferred to the proper accounts contained in the general ledger. The general ledger summarizes in chronological order the activity and financial status of all the accounts of an organization. The entries in the journal and ledger should be crossed-indexed to permit the tracing of any recorded transaction (i.e., an audit trail).

F. For the City's programs, these accounting records must contain reliable and up-to-date information about the source and uses of funds, including:

1. Federal grant awards (or subgrant allocations) received by the organization;
2. Current authorization and obligations of City funds;
3. Un-obligated balances (funds remaining available for distribution);
4. Assets and liabilities;
5. Program income;
6. Actual outlays or expenditures, with further breakdown by:
 - a. The grant program from which the funds are derived;
 - b. The eligible activity classifications (housing and rehabilitation, economic development public facilities, public service, etc.) or similar classifications that clearly indicate use

of program funds for eligible activities

- G. The internal control requirements provide for the separation of duties and the secure storage of accounting records in limited access areas. In maintaining these accounting records a Sub-grantee should also ensure that:
1. Journal entries are properly approved and explained supported;
 2. Posting and trial balances are performed on a regular basis; and
 3. Fidelity bond coverage is obtained for responsible officials of the organization.
- H. The standards for determining the reasonableness, allowability, and allocability of costs incurred as part of federally financed activities are found in 24 CFR Part 85 for governmental sub-grantees, and in OMB A-122 for nonprofit sub-grantees. According to basic guidelines contained within these OMB circulars, a cost is allowable under the federal program if:
1. The expenditure is necessary, reasonable and directly related to the grant. This standard applies equally to such items as salaries and administrative services contracts, as well as to real property and equipment purchases or leases, travel, and other administrative expenditures. In determining the reasonableness of a given cost, consideration shall be given to:
 - a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or performance of the award;
 - b. the restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations and terms and conditions of the award;
 - c. whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees and clients, the public at large, and the Government; and,
 - d. significant deviations from the established practices of the organization which may unjustifiably increase the award costs.
 4. The expenditure has been authorized by the City, generally through approval of the budget for activity. Any expenditure by sub-grantee on such activities exceeding the approved amount may be disallowed by the City based upon the provision of the contract.
 5. The expenditure is not prohibited under Federal, State or local laws or regulations.
 6. The expenditure is consistently treated, in the sense that the sub-grantee applies generally

accepted accounting standards in computing the cost, and utilizes the same procedures in calculating costs as for its non-federally assisted activities.

7. The cost must be allocable to the federal program. A cost is allocable to a particular cost objective (e.g., grant, program or activity) in proportion to the relative benefits received by that objective. This means that:
 - a. If an office is utilized by two programs during the same hours, the costs of the office must be allocated between the two programs on an equitable basis.
 - b. The same expense cannot be claimed against more than one account (e.g., double billing is prohibited).
 - c. A cost originally allocable to a particular program cannot be shifted to another program in order to overcome deficiencies, to avoid restrictions imposed by the funding source or by law, or for any other reason;
 - d. The composition of direct and indirect costs must be clear. Direct costs must be identified specifically with a particular activity. Indirect costs are those incurred for common objectives, which benefit more than one activity. Sub-grantee's indirect costs must be supported by an indirect cost proposal/cost allocation plan.
8. The cost is net of all applicable credits. Any credits such as purchase discounts or price adjustments must be deducted from total costs charged. The Sub-grantee is not allowed to make a profit from any costs charged to City funds.
- I. The general standard is that all accounting records must be supported by source documentation. Supporting documentation is necessary to show that the costs charged against City funds were incurred during the effective period of Sub-grantee's contract with the City were actually paid (or properly accrued), were expended on allowable items, and had been approved by the responsible officials in the sub-grantee's organization.
 1. The source documentation must explain the basis of the costs incurred, as well as showing the actual dates and amount of expenditures.
 - a. With respect to payroll, source documentation includes employment letters and all authorizations for rates of pay, benefits, and employee withholdings. For staff time charged to the program activity, time and attendance records must be available.
 - b. With respect to the cost of space and utilities, space costs must be supported by documentation such as rental or lease agreements. Utilities will be supported by the

bills from the utility companies. Both types of expenses will be supported by canceled checks, if the cost of space or utilities is split between City funds and other funding sources, there must be a reasonable method in place to allocate the charges fairly among the Sources.

- c. With respect to supplies, documentation includes purchase orders or requisition forms initiated by an authorized representative of the sub-grantee, an invoice from the vendor (which has been signed and dated by the sub-grantee indicating the goods were received, the canceled check from the vendor demonstrating payment was made, and information regarding where the supplies are being stored and for what cost objectives they are being used.
- 3. All source documentation does not have to be located in the Department of Housing and Community Development's project files, but it must be readily available for review by the City, HUD or other authorized representatives at all times.
 - 3. The sub-grantee must ensure that either (a) an encumbrance/obligation is recorded whenever a contract is signed or purchase order is issued, or (b) up-to-date information on the status of all obligations is otherwise readily accessible.
 - 4. The sub-grantee must maintain a complete, accurate and up-to-date record of the receipt and use of City generated program income.
- J. Sub-grantees must have procedures in place to monitor obligations and expenditures against their approved budget(s) for City funded activities. The City is under no obligation to reimburse a sub-grantee for expenditures that exceed approved budget line items or the overall budget for City assisted activities. Therefore, the sub-grantee must have an on-going system to compare actual receipts, encumbrances, and expenditures with the City program budget in order to ascertain in a timely fashion whether it will be necessary to initiate a formal budget revision, in addition, since the budget reflects the sub-grantee's best estimate of the resources necessary to accomplish the project scope of services, any pattern of line item overruns should prompt a careful re-assessment of whether the available resources will still be sufficient to achieve the agreed-upon objective.
 - K. Sub-grantees are required to have procedures in place to minimize the time elapsed between receipt of funds from the City and the actual disbursement of those funds.
 - 1. The City operates under the cost reimbursement method that entails a transfer of City

funds to the sub-grantee based on actual expenditures or incurring costs by the sub-grantee prior to the request for funds.

2. Sub-grantee must include accurate information in its reimbursement requests. This requirement is intended to address the intentional falsification of reimbursement information.
 3. Sub-grantee must return erroneously reimbursed funds to the City in a timely fashion.
 4. Program income (other than program income deposited in a City authorized revolving fund) must be disbursed in payment of program costs prior to requesting further reimbursements from the City. (24 CFR 570.504(b)(2)(ii) and 570.504 (c)).
- K. Financial reports prepared by a sub-grantee must be accurate, timely, current, and represent a complete disclosure of the financial activity and status in each program under which assistance is received. A sub-grantee's accounting and record-keeping system must be able to support the data included in (a) its reimbursement requests, (b) its other financial and progress reports, and (c) any submission necessary for the Sub-grantee's performance reports.

II. Procurement and Contracting

This section outlines the requirements for using Federal funds to purchase materials products or services under the CDBG and HOME Entitlement programs. Whether you are a small agency purchasing occasional office supplies or a large organization contracting for millions of dollars of construction services, the requirements governing the purchasing process are designed to ensure free and open competition. You should seek to buy with City funds only what is necessary under the terms of your contract and no more. You should also be able to ensure the integrity of your purchasing decisions, to document the history, results and decisions behind your purchases, to follow the rules for certain kinds of transactions and to offer opportunities to low and disadvantaged firms to respond to your purchasing needs. By following these requirements you are helping to guarantee the fairness and the vitality of our free market system, and to ensure that taxpayer resources are not being wasted.

Sub-grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the Sub-grantees shall participate in selection, or in the award or

administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) The employee, officer or agent, (ii) Any member of his/her immediate family, (iii) His/her partner, or (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The Sub-grantees' officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts. Sub-grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Sub-grantees' officers, employees, or agents, or by contractors or their agents. The Town/County may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

A. Grantee Responsibilities.

This section covers general information about the procurement requirements:

1. General provisions
2. Summary of Federal requirements
3. Bonding and insurance
4. Use of local, small, minority and/or women-owned businesses
5. Procurement Options
 - a. Small Purchases
 - b. Competitive Sealed Bid
 - c. Competitive Proposals
 - d. Non-competitive Proposals/Sole Source
6. Other Options for Performing the work
7. Continuing with a previously-selected contractor

B. General Provisions

The standards and procedures for procurement are intended to ensure that supplies, equipment, construction, and other services acquired in whole or part with federal funds are:

- obtained as efficiently and economically as possible; and,

- procured in a manner that provides, to the maximum extent practical, open and free competition.

Solicitations must explain all the requirements that the bidder/offeror has to meet for his or her bid/offer to be evaluated by the grantee. Solicitations for goods and services must be based on a clear and accurate description of the material, product, or service to be procured, and cannot contain features which unduly restrict competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- placing unreasonable qualifying requirements on firms;
- requiring unnecessary experience and excessive bonding;
- specifying only “brand name” products instead of allowing “an equal” product;
- non-competitive pricing practices between firms or affiliated companies; and
- non-competitive awards to consultants on retainer contracts.

Awards are to be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee, price and other factors considered. Any and all bids may be rejected when it is in the grantee’s interest to do so. The grantee must ensure that the award is made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration should be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

C. Summary of Federal requirements

1. Records and files. According to 24 CFR 85.36(b)(9), the grantee must maintain records to detail the significant history of a procurement. The grantee must maintain files on the rationale for selecting the methods of procurement used, selection of contract type, the contractor selection/rejection process, and the basis for the cost or price of a contract. (See Chapter 7 for more on recordkeeping.)
2. Pre-qualified lists of vendors/contractors. If such lists are used, they must be current, developed through open solicitation, include adequate numbers of qualified sources, and must allow entry of other firms to qualify at any time during the solicitation period (24 CFR 85.36(c)(4)).
3. Unfair competitive advantage. To eliminate unfair competitive advantage, if the grantee has used a contractor to develop or draft specifications, requirements, statements of work,

invitations for bids, and/or requests for proposals, the grantee should exclude that contractor from the competition for such.

4. Debarred/ineligible contractors. The grantee must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension" (24 CFR 85.35).
5. Written procedures for contractor selection. The grantee must have written selection procedures for procurement transactions, adequate to ensure that:
 - a. The purchase of unnecessary or duplicate items is avoided. Where appropriate, an analysis should be made of lease vs. purchase alternatives (24 CFR 85.36(b)(4);
 - b. Whenever possible, use of federal excess and surplus property, or of intergovernmental agreements for procurement or use of common goods and services should be considered as a way to foster greater economy and efficiency (24 CFR 85.36(b)(5) and (6));
 - c. All purchase orders (and contracts) are signed by the grantee's authorized official(s);
 - d. Items delivered and paid for are consistent with the purchase order and/or contract for the goods or services;
 - e. Timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized;
 - f. A cost or price analysis is performed for every procurement action, including contract modifications, and documentation to that effect is maintained in the grantee's files. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the grantee must make independent estimates before receiving bids or proposals (24 CFR 85.36(f)); and,
 - g. Profit or fee is negotiated separately from price where competition is lacking or a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of past performance, and industry rates for the area (24 CFR 85.36(f)(2)).

6. Contract pricing. The sub-grantee must not use “cost plus a percentage of cost” pricing for contracts (24 CFR 85.36(f)(4)); in addition, the grantee should use “time and material” type contracts only after a determination is made that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk (24 CFR 85.36(b)(10)).
7. Protest procedures. The sub-grantee must have protest procedures in place to handle and resolve disputes relating to procurement (24 CFR 85.36(b)(12)).
8. Documenting contractor performance. The sub-grantee must have a documented system of contract administration for determining the adequacy of contractor performance (24 CFR 85.36(b)(2)).
9. Code of conduct. The sub-grantee must have a written code of conduct governing employees, officers, or agents engaged in the award or administration of contracts (24 CFR 85.36(b)(3)).

C. Bonding and insurance

For construction or facility improvement contracts or subcontracts exceeding \$100,000, the grantee must ensure that its procurement meets the minimum federal requirements (24 CFR 85.36(h)) for bid guarantees, performance bonds, and payment bonds. These include:

1. A bid guarantee from each bidder equivalent to 5% of the bid price. The bid guarantee must be a firm commitment in the form of a bid bond, certified check or other negotiable instrument as assurance that the bidder is prepared to execute a contract within the time specified for the bid amount;
2. A performance bond from the (sub)contractor for 100% of the contract price to secure the (sub)contractor’s fulfillment of all obligations under the contract; and,
3. A payment bond from the (sub)contractor for 100% of the contract price, to assure payment of all persons supplying labor and material under the contract.

D. Use of local, small, minority and/or women-owned businesses

1. Federal regulations make it very clear that grantees should make every effort to use local business firms and contract with small, minority- owned, and women-owned businesses in the procurement process. Specifically, the grantee must take affirmative steps to use small

firms, minority-owned firms, women-owned firms, or labor surplus area firms in the grantee's CDBG-financed activities (24 CFR 85.36(e)). For example, the grantee should:

- a. Incorporate such businesses in solicitation lists whenever they are potential sources;
 - b. Ensure that such businesses are solicited when identified as potential sources;
 - c. Divide procurement requirements, when economically feasible, to permit maximum participation of such businesses; and,
 - d. Require prime contractors, when subcontracts are let, to take affirmative steps to select such firms.
2. In conformance with the requirements of Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible, the grantee must award contracts for work to be performed to eligible business concerns located in or owned by residents of the target area to ensure that the employment and other economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very-low income persons, particularly those who are recipients of government assistance for housing (see 24 CFR 570.607(b)).

Note, however, that the desire to award contracts to local firms is not a legitimate excuse for avoiding an open and competitive procurement process.

E. Procurement Options

Contracted: If the grantee wants to contract out for services, the grantee must go through a procurement process. If the total cost of the project from all funding sources is less than \$100,000, the grantee can procure services using one of several options discussed below. If the total cost of the project exceeds \$100,000, the grantee may not use the small purchase method.

No loss leader arrangements: The intent of federal regulations is to require maximum open and free competition. Any "loss leader" type of arrangement in which a consultant offers to provide free services before an applicant receives a grant in return for a future contract is prohibited by federal regulations.

Note about the procurement methods: Among the procurement approaches described below, the competitive sealed bid resulting in a firm, fixed price contract is the preferred

procurement approach when there are numerous available and qualified providers, when the requirements and specifications are thoroughly detailed and are unlikely to change, and where the grantee has the opportunity to make the provider assume a large share of the risk for non-performance.

HUD allows Grantees to follow either their local small purchase procurement policy or the federal policy. If the local policy is used, it must be at least as stringent as the federal policy, described below.

1. Small Purchase

The small purchase method may be used for procurement of \$100,000 or less in the aggregate, per 24 CFR 85.36(d) (1). A procurement of more than \$100,000 may not be inappropriately broken up into smaller components solely to qualify for the small purchase approach. Competition is sought through oral or written price quotations. The grantee must document the receipt of an adequate number (usually three) of price or rate quotations from qualified vendors.

2. Competitive Sealed Bid [24 CFR 85.36 (d)(2)]

The competitive sealed bid is the preferred method for procuring construction services. This method must lend itself to a firm, fixed price contract (lump sum or unit price) where the selection can be made principally on the basis of price.

- a. The grantee must advertise the Invitation for Bid (IFB) in publications of general circulation;
- b. The IFB must include complete and accurate specifications and pertinent attachments, and clearly define items or services needed, in sufficient detail for the bidders to properly respond;
- c. Bids must be opened publicly at the time and place stated in the IFB;
- d. The grantee must receive at least two or more responsible bids for each procurement transaction; and,
- e. If awarded, the contract must be given to the lowest responsive and responsible bidder. The grantee can, however, decide not to make the award to any of the bidders.

3. Competitive Proposals [24 CFR 85.36(d)(3)]

This method has two sub-parts—the Request for Proposal and the Request for Qualifications.

Request for Proposals

- a. The Request for Proposals (RFP) must clearly and accurately state the technical requirements for the goods and services required;
- b. The grantee must publicize the RFP, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;
- c. Proposals must be solicited from an adequate number of qualified sources, consistent with the nature and requirements of the procurement;
- d. The grantee must conduct a technical evaluation of the submitted proposals to identify the responsible offerors;
- e. As necessary, the grantee must conduct negotiations with those offerors who are deemed responsive and responsible and fall within a competitive price range, based on the grantee's evaluation of the bidders' pricing and technical proposals. After negotiations, these bidders may be given the opportunity to submit a "best and final" offer; and
- f. The grantee must award the contract to the most responsive and responsible offeror after price and other factors are considered through scoring the proposals or "best and final" offers according to predetermined evaluation criteria. The successful proposal/offeror must clearly be the most advantageous source of the goods and services.

Request for Qualifications

For procurement involving architecture or engineering services, the grantee may use the Request for Qualifications (RFQ) competitive proposal procedure whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. In these instances, price is not used as a selection factor.

Once the most-qualified firm is identified, only that firm is asked for a price proposal which is subject to negotiation of a fair and reasonable price. If negotiations with the selected firm are unsuccessful, this process is repeated with the next highest-ranked firm, until a fair and reasonably priced contract can be awarded. The sub-grantee must take care to document the basis for its determination of the most qualified competitor and the reasonableness of the contract price. This qualifications-based approach to the competitive proposals method may not be used to purchase other than architectural and engineering services (24 CFR 85.36(d)(3)(v)).

For applicants' information, the above-cited federal rule relating to the procurement of architectural and engineering (A/E) services is quoted verbatim:

“Grantees and sub-grantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.”

This means that:

- ▶ Qualifications-based procurement can be used only for A/E services.
- ▶ A Request for Qualifications may be issued.
- ▶ The competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
- ▶ An RFQ cannot be used to purchase other types of services, even though A/E firms are potential sources to perform other types of services.

In addition, the federal procurement regulations generally discourage the use of local geographical preferences in the evaluation of bids or proposals except where mandated by federal statutes, due to the restrictions on open competition that result. However, in

procuring architectural and engineering services, geographic location is permitted as a selection criteria provided this criterion leaves an appropriate number of qualified firms (24 CFR 85.36(c)(2)).

4. Non-Competitive Proposals/Sole Source [24 CFR Part 85.36 (d) (4)]

This method may be used only under very limited circumstances and the grantee must obtain Department approval before using this method.

When requesting permission to use this method, the grantee will have to show that another method of procurement was not feasible because:

- a. the item or service was only available from a single source;
- b. a public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or
- c. competition was determined to be inadequate after solicitation of proposals from a number of sources.

F. Continuing with a previously-selected contractor.

If the jurisdiction has a consultant under a pre-existing, multi-year contract, it is permissible to continue to use that consultant for the new grant as long as the activity to be carried out was outlined in the original scope of work used to procure the consultant, and the process used to procure the consultant met Federal requirements.

Please note that multi-year contracts should be limited to three years and to one specialty area, such as housing, public works, or economic development. A single RFP for CDBG administrative services including housing, public works, and economic development is not consistent with federal procurement requirements. That is, an RFP of such broad scope would place unreasonable requirements on firms in order for them to qualify to do business. Therefore, HCD restricts three-year contracting to specific specialty areas. A single RFP to carry out all CDBG and HOME housing-related activities or all CDBG economic development-related activities is acceptable.

G. In conformance with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, to the greatest extent feasible Sub-grantees must award contracts for work to be performed to eligible business concerns located in or owned by residents of the target area to ensure that the employment and other economic opportunities generated by

Federal financial assistance for housing and community development programs, shall, to the greatest extent feasible, be directed toward low and very low-income persons, particularly those who are recipients of government assistance for housing (See 24 CFR 570.607(b)); including:

- H. Federal regulations - Encourage sub-grantees to make every effort to use local business firms and contract with small, minority owned and/or women owned businesses in the procurement process. Specifically,
 - 1. A sub-grantee must take affirmative steps to use small firms, minority owned firms, women owned firms, or labor surplus area firms in its Federally financed activities (24 CFR 85.36(e)); including:
 - a. Incorporating such businesses in solicitation lists whenever they are potential sources;
 - b. Ensuring that such businesses are solicited when identified as potential sources;
 - c. Dividing procurement requirements, when economically feasible, to permit maximum participation of such businesses; and
 - d. Requiring prime contractors, when subcontractors are let, to take affirmative steps to select such firms.
 - 2. In conformance with the requirements of Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible Sub-grantees must award contracts for work to be performed to eligible business concerns located in or owned by residents of the target area to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low and very-low income persons, particularly those who are recipients of government assistance for housing (24 CFR 570.607(b)).

The City of San Antonio, as a public employer, has a policy to ensure equal employment opportunity and carries out affirmative action programs to fulfill that policy in the allocation of City of San Antonio contracts. It shall be the purpose of the Small Business Economic Development Advocacy (SBEDA) to increase minority business enterprise~ utilization in the awarding of City of San Antonio contracts for professional services, construction, and procurement; and, to better assist small business enterprise in competitively bidding on City projects or procurement. This program shall also assist business enterprises owned and

controlled by women and business enterprises owned and controlled by handicapped individuals.

1. It is the policy of the City of San Antonio that Small and/or Minority Business Enterprises shall have a maximum practicable opportunity to participate in the awarding of City contracts
2. The contractor agrees to use its best efforts to carry out this policy through award of sub-contracts to small and/or minority business enterprises to the fullest extent consistent with the efficient performance of this contract.
3. To the greatest extent feasible sub-grantees shall adhere to the herein attached SBEDA participation and utilization policies and provisions

In the event of the contractor's failure or refusal to comply with this SBEDA clause, either during the bidding process or at any time during the term of a contract, the contract may be cancelled, terminated or suspended in whole or in part by the City of San Antonio.

III. **Civil Rights and Fair Rousing, Employment and Contracting Opportunities**

For a more complete explanation of the standard and procedures relevant to any particular requirement, refer to the federal regulations, to the executive orders or laws cited, and to your written contract with the City of San Antonio.

The Sub-grantee must certify that it will administer its federal fund in compliance with the following laws and Executive Orders.

- A. Title V of the Civil Rights Act of 1964 (Public Law 88-352): This law states that no person that on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- B. The Fair Housing Act - Title VIII of the Civil Rights Act of 1968 (Public Law 90-284): This law prohibits discrimination in the sale, rental, and financing of housing and the provisions of brokerage services because of race, color, religion, sex, national origin, handicap, or familial status.
- C. Executive Order 11063, as amended by Executive Order 12259 (implemented in 24 CFR Part 107): This order and its implementing regulations require the Department of Housing and Community Development to take all actions necessary to prevent discrimination because of race, color, religion, sex, or national origin in the use, occupancy, sale, leasing, rental or

other disposition of residential property assisted with Federal loans, advances, grants or contributions

- D. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended. This law provides that any grant under section 106 shall be made only if the Sub-grantee certifies to the satisfaction of the Secretary of HUD that the Sub-grantee will, among other things, affirmatively further fair housing.
- E. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended; This section mandates that no person on the grounds of race, color, national origin, sex, or religion shall be excluded from participation, denied the benefits of, or otherwise be subject to discrimination under any activity funded in whole or in part with Federal funds.
- F. Section 504 of the Rehabilitation Act of 1973, as amended; This section specifies that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance.
- G. Americans with Disabilities Act of 1990: This law prohibits discrimination on the basis of disability in employment, state and local government services, and in public accommodation and commercial facilities. The Act defines the range of conditions that qualify as disabilities, and the reasonable accommodations that must be made to assure equality of opportunity full participation, independent living, and economic self-sufficiency for persons with disabilities.
- H. The Age Discrimination Act of 1975, as amended: This law provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving Federal assistance.
- I. Executive Order 11246 (as amended by Executive Order 11375 and 12086) Equal Opportunity Under HUD Contracts and MUD-assisted Construction Contracts: This order requires that grantees and Sub-grantees, and their contractors and subcontractors, agree not to discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin.
 - 1. Exemptions to Equal Opportunity Clause (41) CFR Chapter 50:
 - a. Contracts and subcontracts not exceeding \$10,000 (other than government bills of lading) are exempt. The total amount of the contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this

exemption.

- b. Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.
 - c. Contracts and subcontract not exceeding \$100,000 for standard commercial supplies or raw materials are exempt.
 2. Anyone contracting with the City for federally funded projects must insert the above clauses in all applicable subcontracts.
 3. The subcontractor will submit a quarterly report to the Department of Housing and Community Development three months after the start of work on the contract and every three months thereafter. Said report shall be made on HUD Form 3 (Economic Opportunities for Low and Very Low Income Persons in Completion with Federally Assisted Project) and the New Hire Form.
 4. Should the Department of Housing and Community Development determine a contractor to be in non-compliance with the equal opportunity requirements, procedures to “show cause” why funds should not be withheld will be reported with a copy of the report going to HUD.
- J. Section 3 of the Housing and Community Development Act of 1968 requires that to the greatest extent feasible, a Sub-grantee must:
1. Ensure opportunities for training and employment arising in connection with housing rehabilitation including reduction and abatement of lead-based paint hazards), housing reconstruction, or other public construction project are given to low and very low-income persons residing within the metropolitan area in which the federally funded project is located; where feasible, priority should be provided to low and very low-income residents within the service area of the project or the neighborhood in which the project is located, and to low and very low-income participants in other HUD programs; and,
 2. Award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards) housing reconstruction, or other public construction projects to business concerns that provide economic opportunities for low and very low-income persons residing within the metropolitan area in which the federally funded project is located; where feasible, priority should be given

to business concern which provide economic opportunities to low and very low-income residents within the service area of the project or the neighborhood in which the project is located, and to low and very low- income participants on other HUD programs.

IV. Labor Standards

Sub-grantees are strongly encouraged to consult closely with the City during the planning of any construction or rehabilitation projects in order to assure that all the requisite labor standards will be properly observed.

A. Statutory provisions.

1. The Davis-Bacon Act, the Contract Work Hours and Safety Standards Act and the Copeland (Anti Kickback) Act apply to construction being assisted with federal funds except that housing rehabilitation projects with less than eight units do not trigger these requirements. The Fair Labor Standards Act (minimum wages) will be applicable in most cases whether or not the previous acts apply. Sub-grantees must include provisions relating to the following acts in each application contract.
2. Davis-Bacon and Related Act (40 USC 276 (A)-7) ensures that mechanics and laborers employed in construction work under federally assisted contracts are paid wages and fringe benefits equal to those which prevail in the locality where the work is performed. This act also provides for the withholding of funds to ensure compliance and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs.
3. The Copeland ("Anti Kickback") Act (40 USC 276c) governs the deductions from paychecks which are allowable and makes it a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors to submit weekly payrolls and statements of compliance.
4. The Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) provides that mechanics and laborers employed on federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.

5. Fair Labor Standards Act of 1938, as amended (29 USC 201, et. Seq.) establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. It also requires the payment of wages for the entire time that an employee is required or permitted to work and establishes child labor standards.

V. Davis-Bacon Act Compliance Requirements

The Davis-Bacon Act was enacted in 1931, amended in 1935 and 1964, to protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels.

The Davis-Bacon Act requires payment of locally “prevailing wages” and benefits to laborers or mechanics employed on direct federal contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) of public buildings or public works.

A complete copy of the Davis-Bacon and Related Acts is on file and available for review in the City’s Department of Housing and Community Development.

- A. All laborers and mechanics employed or working on the site of the work shall be paid unconditionally and not less often than once a week the full amount of wages and born tide fringe benefits computed at rates not less than those contained in the wage determination.
 1. Employers who do not make contributions or payments to born tide fringe benefits funds, plans, or programs shall pay an amount equivalent to the fringe benefit rate (if any) required on the wage determination directly to the employee added to the basic hourly rate of pay.
 - a. The employer may make payroll deductions as permitted by the Department of Labor (DOL) Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to “kick back” any of their earnings. Deductions may include employee obligations for income taxes, Social Security payments, insurance premiums retirement, savings accounts, and any other legally permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee.

- b. Each laborer and mechanic shall be classified in accordance with the work classification listed on the wage determination and the actual type of work he/she performs and shall be paid the appropriate wage rate and fringe benefits for the classification regardless of the level of skill.
 - c. Laborers and mechanics that perform work in more than one classification may be compensated at the rate specified for each classification provided that the employer maintains time records that accurately set forth the time spent in each classification in which work was performed, If accurate time records are not maintained, the employee shall be compensated at the highest of all wage rate for the classifications in which work was performed.
 - d. If the wage determination does not include a work classification needed for the construction of the project, HUD) may approve an additional classification and wage rate.
2. Apprentices and trainees may be compensated at rates less than prescribed by the wage determination for their craft only in accordance with the following parameters.
- a. The apprentice or trainee shall be individually registered in a bona fide program certified by the BAT or a SAC.
 - b. Each apprentice and trainee shall not be paid less than the specified rate in the registered program for his/her level of progress. If the rate specified is represented as a percentage of the journeyman rate for that craft, the percentage shall be applied to the corresponding wage rate contained in the applicable wage determination.
 - c. The maximum number of apprentices or trainees employed on the site of work may not exceed the ratio of apprentices or trainees to journeymen permitted to the employer in the certified program. Apprentices or trainees, who are employed at the site in excess of the allowable ratio, shall be paid the wage rate contained on the applicable wage determination for classification of work actually performed. Compliance with the allowable ratio shall generally be met on a day-to-day basis.
 - d. In the event the BAT or SAC withdraws approval of an apprenticeship or trainee program, the employer shall no longer be permitted to utilize apprentices/trainees at less than the predetermined rate for the type of work performed, unless or until

an acceptable program is approved.

3. Payrolls and basic records to such payrolls shall be maintained by each employer with respect to his/her workforce employed on the site of the work. The principal contractor shall maintain such records relative to all laborers and mechanics working on the site of the work. Payrolls and related records shall be maintained during the course of the construction work and preserved by the contractor and all employers for at least 3 years following the completion of the work. Such records shall contain:
 - a. The name, address and social security number of each laborer and, mechanic;
 - b. His or her correct work classification(s);
 - c. Hourly rates of pay including rates of contributions or costs anticipated for fringe benefits;
 - d. Daily and weekly number of hours worked, including any overtime hours;
 - e. Deductions made and actual net wages paid;
 - f. Evidence pertaining to any fringe programs;
 - g. Evidence of the approval of any apprenticeship or trainee program, the registration of each apprentice or trainee and the ratios and wages contained in the program.
4. Certified weekly payroll reports (CPRs) shall be submitted with respect to each week any contract work is performed. The principal contractor is responsible for full compliance with regard to its own workforce and with regard to the compliance of every subcontractor. For this reason, all CPRs and any related records are submitted to the CITY through the principal contractor.
 - a. CPR information may be submitted in any form provided that the CITY can reasonably interpret the information to monitor employer compliance with the labor standards.
 - b. CPRs shall be submitted for each contractor/subcontractor (employer) beginning with the first week such employer performs work on the site of the work. CPRs shall be submitted promptly following the close of each such pay week
 - c. CPRs for each employer shall be numbered sequentially beginning with '1'. The CPR for the last week of work performed on the project by each employer shall be clearly marked final.

- (1) The first payroll on which each employee appears shall contain the employee's name, address and social security number. Thereafter, the address and social security only need to be reported if there is a change in such information.
 - (2) The first payroll on which any apprentice or trainee appears shall be accompanied with a copy of that apprentices or trainees registration in an approved program. A copy of the approved program pertaining to the wage rates and ratios shall also accompany the first CPR on which the first apprentice or trainee appears.
 - (3) The division of hours worked in different classifications shall be accurately maintained and clearly reported. The employer may list the employee once for each classification, distributing the hours of work accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.
 - (4) The CPR.s should reflect only hours worked at the site of work. If an employee performs work at job sites other than the project for which the CPR is prepared, those hours should not be reported on the CPR. In these cases the employer should list employee's name, classification, hours this project only, and the rate of pay and gross earnings on this project. Deductions and net pay may be reflected based upon the employee's total earnings (for all projects) for the week.
- d. Employers are not required to submit CPRs for weeks during which no work was performed on the site of the work provided that the CPRs are number sequentially or that the employer has provided written notice that its work on the project has been suspended.
 - e. Each weekly payroll shall be accompanied by a "Statement of Compliance". The Statement of Compliance shall be executed by the original signature of the principal executive of the contract/subcontractor or of a person authorized in writing by the principal. The statement shall certify to the following:
 - (1) That the payroll period documents contain the information required to be maintained and that the information is correct and complete;

- (2) That each laborer or mechanic (including each helper, apprentice, or trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set for in Federal regulation 29 CFR Part 3; and
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed as specified in the applicable wage determination incorporated into the contract.
- f. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- (1) Each employer shall make the required records (CPRs and related documents) available for inspection copying or transcription by authorized representatives of the CITY, I-Hit), or DOL. In addition, each employer shall permit authorized representatives to interview employees during work hours on the job site.
 - (2) Failure by an employer to submit the required records or to make them available, or permit on-site employee interviews may, after written notice to the contractor, cause a suspension of any further payment, advance or guarantee of funds. In addition, failure to submit the records on request or to make them available may be grounds for debarment action pursuant to 29 CFR 5.12.
 - (3) In order to protect the personal privacy interests of employees, copies of weekly payrolls shall not be released to outside parties and may be withheld under Exemption 6 of the Freedom of Information Act (FOIA) unless the employees' personal identifiers (e.g., name, address, and social security number) are first deleted.
 - (4) The identity of any person providing information concerning the labor standards compliance of any contractor or subcontractor shall not be

disclosed in any manner to anyone other than authorized City or Federal officials unless written consent is provided in advance by such person. Additionally, any portions of a statement or written document provided by such person that would reveal the identity of the source shall not be disclosed without prior written consent. Disclosure of such statements and documents shall be governed by the provisions of the Freedom of Information Act and the Privacy Act of 1974

VI. Labor Standards Administration, Compliance Monitoring and Enforcement

Routine monitoring of projects, Certified Payroll Records and related documentation is performed to ensure compliance of all employers with the applicable labor standards provisions. Monitoring identifies possible misunderstandings on the part of the employers, discrepancies in the record, and violations. Written monitoring reports to the principal contractor advise the contractor of the status of compliance, provide clarification where misunderstanding may exist, and the informs contractor of any additional submissions which may be required to correct discrepancies or to complete the record.

- A. The City is responsible for the administration - and enforcement of labor standards provisions for HUD) assisted programs administered by the City. For each program and proposed project or contract the City shall:
1. Determine the specific labor standard parameters applicable to the project.
 2. Obtain the Davis-Bacon wage determination and labor standards provisions applicable to the project from the HUD Labor Relations Field staff and ensure incorporation of the same in the project specifications.
 3. Ensure that the wage determination is still current at bid opening or other appropriate wage determination effective date.
 4. Verify the eligibility of the principal contractor.
 5. Conduct a Preconstruction Conference to inform and instruct the contractor and subcontractors concerning their wage and reporting obligations.
 6. Identify and initiate requests for additional classifications and wage rates needed for the construction of the project.
 7. Perform timely routine monitoring reviews of CPRs and related submissions for

compliance with labor standards.

8. Notify the principal contractor in writing of any labor standards deficiencies and required corrective actions.
 9. Investigate complaints of underpayment or other labor standards violations.
 10. Prepare and submit to HUD reports on all enforcement activity.
 11. As necessary, refer cases for administrative hearing (29 CFR, Part 5, 5.11) and/or makes recommendations for debarment (29 CFR, Part 5,5.12).
 12. As necessary, require escrow accounts to ensure the payment of outstanding wage or liquidated damages liability.
 13. Dispose of any escrow accounts established for labor standards purposes.
 14. Establish and maintain full documentation of all labor standards administration and enforcement activities.
- B. The City is responsible for the creation, maintenance and preservation of labor standards enforcement files for each project. The files shall be kept up-to-date, maintained in a consistent manner, and secured for the life of the active monitoring of the project and preserved for at least three (3) years following the completion of the project and the final disposition of any compliance issues. The City shall establish a system of labor standards enforcement files for each covered project.
- C. The City is responsible for the following monitoring activities:
1. Interviews of workers will be conducted on a regular basis and will include a broad sampling of the work classifications being employed on the project. (Record of Employee Interviews Form (form HUD-11)).
 2. On-site inspections will be made to ensure that the required notices are posted.
 3. Weekly payrolls will be reviewed and compared with employee interviews and wage rates to verify compliance with applicable labor standards requirements (e.g. payment of minimum wages, payment of overtime, no ineligible deductions, etc.)
 4. Once the project is completed, a final wage compliance report shall be filed with HUD.
- D. For each construction contract, the Sub-grantee shall maintain a file with the following documentation:

1. Copy of wage rate request;
 2. Copy of wage rate, along with any additional classifications;
 3. Bid/contract documents with labor standards provision included;
 4. Contractor eligibility verification;
 5. Ten-day call verification;
 6. Preconstruction conference minutes/sign-in sheet;
 7. Payrolls, with evidence of their review;
 8. Notice of start of construction;
 9. Employee interviews;
 10. Evidence of any violations and corrective actions;
 11. Final wage compliance reports; and
 12. Monthly employment utilization reports, where applicable.
- E. Violations of the labor standards requirements must be corrected. Failure to pay sufficient overtime wages will result in the assessment of liquidated damages in the amount of \$10 per worker per day. Only HUD and the Department of Labor are authorized to reduce or waive these liquidated damages. The contractor must be notified of his liability. Then, if appropriate, he or she may request a waiver.
- H. Debarred, Suspended and Ineligible Contractors and Sub-recipients; Federal cannot be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or sub-recipient during any period of debarment, suspension or placement of ineligibility status. CITY will check all contractors, subcontractors lower tier contractors and sub-grantees against the Federal publication that lists debarred, suspended and ineligible contractors.

VI. Environmental Requirements

In its use of Federal, the City is required to assume responsibility for environmental review, decision-making, and other actions that would otherwise apply to HUD under the National Environmental Policy Act of 1969 and other provisions of law. The Federal regulations explicitly prohibit Sub-grantees from assuming the City's environmental responsibilities

However, under the applicable regulations, Sub-grantees are not allowed to incur program expenses until the City has completed an environmental review of the proposed

activities, received the release of funds, and provided the Sub-grantee with formal clearance, with directives for any action necessary to mitigate negative environmental impacts.

VII. Historic Preservation

Sub-grantees must comply with the provisions of the Historic Preservation Act and related laws and Executive Orders. Before any commitments are made for any physical improvements, alterations or demolition of any building, a Sub-grantee must receive assurances from the City that they are in compliance.

Part of the City's responsibility is to consult with the State Historic Preservation Officer as to whether the property: (1) is or could be declared an historic property; (2) if the property is located in an historic district or an area which could be declared an historic district; (3) if the proposed changes to the property could adversely affect historic properties or neighborhoods which could be declared historic.

If properties can be adversely affected, prior to initiating project work, an agreement must be reached on appropriate mitigating measures with all parties identified. (36 CFR Part 800)

VIII. National Flood Insurance Program

If a community has had notice for more than a year that an area has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, Federal funds cannot be used for acquisition or construction purposes in the area unless the community is participating in the National Flood Insurance Program and such insurance has been purchased for the properties in question.

IX. Relocation, Real Property Acquisition and One-for-One Housing Replacement

A Sub-grantee must comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and 24 CFR 570.606(b); and (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act. The policies and requirements of these laws are described in HUD Handbook 1378, Tenant

Assistance, Relocation and Real Property Acquisition.

Under URA and the Plan, the Sub-grantee must provide relocation assistance to persons (families, individuals, businesses, non-profit organizations and farms) that are permanently displaced as a direct result of acquisition, rehabilitation demolition or conversions for a federally assisted project. All property occupants must be issued certain notices on a timely basis. (Failure to issue timely notices may result in unnecessary expenses.)

The Plan also requires one-for-one replacement of any occupied or vacant occupiable low/moderate income housing that is demolished or converted to another non-residential use in connection with a federally assisted project. Finally, the Plan requires the identification of the steps that will be taken to minimize displacement.

X. Lead-Based Paint

There is a general prohibition against the use of lead-based paint in connection with any federally funded activities involving the construction or rehabilitation of residential structures. In addition:

- A. For properties constructed prior to 1978, the Sub-grantee must notify applicants for rehabilitation assistance, and tenants or purchasers of properties owned by the Sub-grantee or City and acquired or rehabilitated with federal funds, of the hazards of lead-based paint poisoning and the other specific information set out in 24 CFR 570.608(b)(2)(I) through (vi).
- B. According to 24 CFR 570.608(c)(3), for housing built prior to 1978 that is being rehabilitated with federal funds which may be occupied or frequented by families with children under seven years of age, the sub-grantee must undertake steps to ensure that such housing is inspected for defective paint and those surfaces found to be defective must be tested for the presence of lead paint, If lead-based paint is detected, all interior and exterior chewable surfaces found to contain lead must be treated in accordance with 24 CFR 570.608(c)(4).

XI. Political Activity

Sub-grantees are prohibited from using federal funds to finance the use of facilities or equipment for political purposes, or to engage in other partisan political activities, such as sponsoring candidate forums, brochures voter transportation, or voter registration.

XII. Conflict of Interest

Except for the use of federal funds to pay for salaries and other related administrative or personnel costs, the general standard is that no employee, agent, or officer of the Sub-grantee, who exercises decision making responsibility with respect to the funds and activities, is allowed to obtain a financial interest in or benefit from the activities, or have a financial interest in any contract, subcontract or agreement regarding those activities or in the proceeds of the activities. Specific provisions include these requirements;

- A. Applies to any person who is an employee, agent, consultant, or officer, or elected or appointed official of the grantee, designated public agency, or sub-recipient; and their immediate family members, and business partner(s).
- B. Applies for such person during their tenure and for a period of one year after leaving the grantee or sub-grantee organization.
- C. Is applicable to the procurement of supplies, equipment, construction, and services; acquisition and disposition of real property; provision of assistance to individuals, businesses and other private entities for all eligible activities (24 CFR 570.201-204); and provision of loans to individuals, businesses, and other private entities.

Part 570.611 Conflict of Interest.

Applicability.

- i. In the procurement of supplies, equipment, construction, and services by subrecipients, the conflict of interest provisions in 24 CFR 85.36 shall apply (see below).
- ii. In all cases not governed by 24 CFR 85.36, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the sub-grantee to individuals, businesses, and other private entities under

eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities).

- (b) *Conflicts prohibited.* The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG/HOME activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG/HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG/HOME-assisted activity, or with respect to the proceeds of the CDBG/HOME-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.
- (c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of sub-grantee that are receiving funds under this part.
- (d) *Exceptions.* (May happen in rare circumstances; see regulations for specifics).

Upon written request, exceptions may be granted by HUD, through the City, after consideration of the cumulative effect of various factors on a case-by-case basis and only with: (a) full disclosure of the potential conflict, and (b) a legal opinion of the Sub-grantee's attorney that there would be no violation of State or local laws in granting the exception.

XIII. Citizen Participation

The Citizen participation segment of the federal funding process must provide citizens with adequate information and notification regarding the amount of funds available for community development and housing activities, the range and scope of activities eligible, as well as other important program requirements as specified in the City of San Antonio Consolidated Plan Budget. Sponsors may submit proposals for projects that address priorities and needs as identified during the citizen participation process.

XIV. Resident Aliens

Certain newly legalized aliens are not eligible to apply for benefits under covered activities handed by the CDBG and HOME programs. “Covered activities” are activities meeting requirements of 24 CFR 570.208(a) that either (1) have income requirements limiting benefits exclusively to low and moderate income persons, or (2) are targeted geographically or other-wise to primarily benefit low and moderate income persons (except for activities that benefit the public at large), and provide benefits on the basis of an application.

XV. References

- 24 CFR 85, referred to as the "HUD common rule," establishes administrative requirements for grants to local government. 24 CFR 85.36 specifically addresses procurement. This chapter is largely based on the language contained in 24 CFR 85.36.
- 24 CFR 570.502(a)(12) invokes the "HUD common rule" for the State CDBG program.
- Federal Circular OMB A-87 establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with State and local governments.
- Section 3 of the Housing and Urban Development Act of 1968, as amended, provides that to the greatest extent feasible, opportunities for training and employment that arise through State CDBG-financed projects shall be given to lower-income residents of a project area, and that contracts awarded in connection with such projects be awarded to businesses located in the project area or businesses owned, in substantial part, by residents of the project area.
- Section 109 of the Housing and Community Development Act of 1974, as amended, provides that no person shall be excluded from participation or employment, or be denied benefits, or be subjected to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part by the CDBG Program.
- Title VII, Civil Rights Act of 1964, provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination based on race, color, or national origin under any program or activity receiving federal financial assistance.

Executive Order 11246, as amended, provides that no person shall be discriminated against on the

basis of race, color, religion, sex, or national origin in any phase of employment during the performance of federal or federally-assisted construction contracts.